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Attorneys for Plaintiff FINISAR CORPORATION

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

FINISAR CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL  
ASSOCIATION, a national banking  
association, not in its individual capacity,  
but solely in its capacity as Indenture  
Trustee in behalf of all Holders of Finisar  
Corporation's 5¼% Convertible  
Subordinated Notes due 2008, 2½%  
Convertible Senior Subordinated Notes due  
2010, and 2½% Convertible Subordinated  
Notes due 2010; and DOES 1 through 10,  
inclusive,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 5:07-CV-04052-JF (PVT)

**DECLARATION OF STERLING A.  
BRENNAN IN SUPPORT OF  
PLAINTIFF FINISAR CORPORATION'S  
MOTION FOR SUMMARY JUDGMENT**

Date: **Friday, July 11, 2008**  
Time: **9:00 a.m.**  
Courtroom: **3**

District Judge: Hon. Jeremy Fogel  
Magistrate Judge: Hon. Patricia V. Trumbull

Complaint Filed: June 22, 2007  
Trial Date Set: None Yet

1 I, Sterling A. Brennan, declare and state:

2 1. I am a member of the State Bar of California, admitted to practice before the  
3 above-entitled Court, a senior shareholder of the law firm Workman Nydegger, and one of the  
4 attorneys of record representing plaintiff and counter-defendant Finisar Corporation ("Finisar") in  
5 the above-captioned action. I make this declaration based upon my own personal knowledge and  
6 records maintained by Workman Nydegger, to which I have access in the course of fulfilling my  
7 duties for Workman Nydegger and its clients (including Finisar), in the ordinary course of  
8 business.

9 2. Attached hereto as Exhibit "A" are true and correct copies of excerpts from  
10 "Model Simplified Indenture," 38 BUSINESS LAWYER 741 (1983).

11 3. Attached hereto as Exhibit "B" are true and correct copies of excerpts from  
12 COMMENTARIES ON MODEL DEBENTURE INDENTURE PROVISIONS, 288 (1971).

13 4. On March 26, 2008, I conducted the deposition in the Action of Diana L. Jacobs,  
14 both in her individual capacity and as the designee, pursuant to Federal Rule of Civil Procedure  
15 30(b)(6), of defendant U.S. Bank Trust National Association. Attached as Exhibit "C" hereto are  
16 true and correct copies of excerpts from the certified transcript of Ms. Jacobs's deposition.

17 I declare under penalty of perjury under the laws of the United States and the State of  
18 California that the foregoing is true and correct.

19 Executed this 6th day of June 2008, at Salt Lake City, Utah.

20  
21 /s/ Sterling A. Brennan  
22 Sterling A. Brennan  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:  
D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson, awilkinson@faegre.com;  
Eva K. Schueller, eschueller@mofo.com; Michael B. Fisco, mfisco@faegre.com; Edward T. Wahl, ewahl@faegre.com and Paul T. Friedman, pfriedman@mofo.com.

**WORKMAN NYDEGGER**

/s/ Sterling A. Brennan

STERLING A. BRENNAN

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